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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,447	02/10/2004	Mark Kutnyak	570056.90041	9409
26710	7590	08/24/2005	EXAMINER	
QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497			LEE, GUNYOUNG T	
		ART UNIT	PAPER NUMBER	
			2875	
DATE MAILED: 08/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

Office Action Summary	Application No.	Applicant(s)	
	10/775,447	KUTNYAK, MARK	
	Examiner Gonyoung T. Lee	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 and 12 is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-7, 11 and 13-17 is/are rejected.
- 7) Claim(s) 8-10 and 12 is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 February 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 05/07/2004.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "33" in Fig. 4 has been used to designate both "power supply container" and a part connected to two threaded bosses (34, 35). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 8, 9 and 10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should be in the alternative form (e.g., "A machine according to claims 3 or 4, further comprising ---"). In claims 8, 9 and 10, "claims 1, 2, 3, 4, 5, 6 or 7" is improper. See MPEP § 608.01(n).
3. Claim 12 is objected to as being dependent upon an objected base claim.
1. Accordingly, the claims 8-10 and 12 have not been further treated on the merits.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 11 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over GLATT (US 5,758,947) in view of CHIEN (US 5,570,946).

6. In regards to claims 1, 11 and 13-17, GLATT discloses a safety helmet having:

- An inner core (Fig. 2, 12) of resilient, impact-reducing material (col. 2, lines 40-44);
- The core (Fig. 2, 12) having cavities (72, 74);
- An outer shell (Fig. 2, 11) overlying the core (12);
- The overlying portions of the shell (Fig. 2, 11) being obviously spaced from the cavities (72, 74);
- The outer shell (Fig. 2, 11) having a substantially opaque outer surface except for at least two windows (col. 5, lines 25-27);
- In another embodiment, the outer shell is alternatively made of a translucent material (col. 5, lines 29-31);
- A plurality of light sources (Fig. 2, 14) supplying a plurality lighting elements;

- The light sources (Fig. 2, 14) being disposed in said cavities (72), so as to be viewed through the respective windows (col. 5, lines 27-29);
- A timing circuitry (Fig. 5) for timing the on-off operation of the lighting elements within the light sources (14) (col. 4, lines 8-9), so as to create an effect of motion (col. 4, lines 23-25);
- At least two circuits (Fig. 5) for supporting the light sources;
- A battery source (Fig. 2, 34) of power for supplying power to the light sources;
- Two windows (Fig. 2, 76) which are at least translucent (col. 5, lines 27-31) and are located at the front and back of the headgear, respectively, and light sources being positioned inside of said respective windows;
- A outer shell (Fig. 2, 82) being releasably secured (col. 4, line 67 – col. 5, line 5);
- The headgear (helmet) having a smooth outer surface and aerodynamic shape (Fig. 2).

GLATT does not disclose:

- At least one graphical image that is disposed on each of windows and illuminated by said light sources so as to be viewed externally (claims 1, 15).

7. In regards to the graphical image that is disposed on a window, GLATT does not expressly disclose the use of a graphical image on a safety helmet. However, GLATT discloses that the invented safety helmet can be used for recreational and occupational activities (col. 1, lines 13-14). CHIEN discloses a protective headwear having a graphical image (Fig. 1, 7 and Fig. 3, 74) that is coated on each of the windows and

illuminated by the multi-colored light sources (col. 11, lines 2-5) so as to be viewed externally. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a graphical image illuminated by multi-colored light sources as shown in CHIEN for the safety helmet of GLATT to provide amusement for recreational activities or to provide information such as signals or signs for better safety of a motorcycle rider.

8. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over GLATT (US 5,758,947) and CHIEN (US 5,570,946) as applied to claim 1 above.

9. In regards to claims 2-4, GLATT and CHIEN disclose the invention substantially as claimed except for the windows with a flame shape.

10. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the windows in the shape of a flame, since it has been held by the courts that the change in shape or configuration, without any criticality, is nothing more than one of numerous shapes that one of ordinary skill in the art would find obvious to provide based on the suitability for the intended final application. See *In re Dailey*, 149 USPQ 47 (CCPA 1966).

11. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over GLATT (US 5,758,947) and CHIEN (US 5,570,946) as applied to claim 1 above.

12. In regards to claims 5-7, GLATT and CHIEN disclose the invention substantially as claimed except for the windows being at least three times the area of any light-emitting element.
13. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the windows at least three times the area of the light emitting element, since it has been held that discovering an optimum value of a result-effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. MANTHA et al. (US 5,743,621), KUO et al. (US 2002/0159250), and APPIAH (US 6,752,510) disclose a safety helmet having an illumination means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gunyoung T. Lee whose telephone number is (571) 272-8588. The examiner can normally be reached on 7:30 - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GTL
8/9/2005


Stephen Husar
Primary Examiner